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Henri Niemann et al v. Grand Central Market, Inc. : Brief in Support of Petition for Rehearing

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

AUG 6 1959

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HENRI NIEMANN, MARIA NIE-
MANN, RENATE NIEMANN, by
her guardian ad litem,
Henri Niemann, and HENRI
NIEMANN, JR., by his
guardian ad litem, Henri
Niemann,

Plaintiffs and
Respondents,

-vs-

GRAND CENTRAL MARKET, INC.
a corporation,

Defendant and
Appellant.

FILED

JUN 25 1959

Clerk, Supreme Court, Utah

Case No. 8670

BRIEF IN SUPPORT OF PETITION
FOR REHEARING

RAY, QUINNEY & NEBEKER
GRANT C. AADNESEN

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and Appellant

IN THE SUPREME COURT

of the

STATE OF UTAH

HENRI NIEMANN, MARIA NIE-
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BRIEF IN SUPPORT OF PETITION
FOR REHEARING

ARGUMENT

POINT I

THE RECORD DOES NOT SUPPORT THE DE-
CISION OF THE SUPREME COURT.

In its opinion in this case this Court stated:

"It was plaintiffs' contention below that defendant failed to properly clean the grinder after pork had been ground, allowing particles to remain and become mixed with subsequently ground beef."

That contention is the crux of plaintiffs' case.

This Court found in its opinion the following:

"Plaintiffs introduced evidence that defendant's meat department ground both beef and pork with the same grinder and that beef was often ground after pork sausage had been processed." (emphasis ours)

The only testimony relating to the grinding of meat in the Grand Central Market came from Mr. LaMont Richins and Mr. Edwin Robert Benzon, and we call the Court's attention to the fact that their testimony established that beef is always ground first; that sausage and beef cannot be ground through the

same grinder without changing a plate in the grinder; that the grinder is always cleaned and washed with 160° heat after sausage is ground.

In setting forth its findings, this Court found that the evidence produced at the trial revealed . . .

"(c) that defendant used the same grinder for beef and pork, the former sometimes being ground after the preparation of sausage . . . "

We respectfully submit that such a finding is without support in the record and that the contrary is the only evidence to be found. The testimony of Mr. Richins is as follows:

Q. Will you tell us how you go about in this Grant Central Market in making sausage?

A. Well, in making sausage, we have some pans, you might say, that will hold all the way from forth to sixty pounds, we always keep beef and pork separate, they are never together, and we take the sausage trimmings out,

put it on the scale, weight it-- and make good sausage, you can't make it good if there is too much seasoning, we figure so many pounds to so many ounces of seasoning, and we weigh it out and take it through the grinder, and you never make ground sausage through the same plate you make ground beef. It has to be a larger plate. The first thing you do is put the large plate on the head of the grinder and run through the sausage, and then put the lean and coarse together,--some butchers like mostly coarse and some maintain it all depends on what looks best in the package, and never use fine.

After we make sausage the mill is always cleaned and washed.

Q. Right then?

A. Right then. (R. 193-194)

Q. Now, could sausage, some particles of sausage be left in the grinder?

A. I doubt that very much.

Q. Could it be?

A. I doubt it.

Q. If it were, would it mix with the beef when the beef was put through?

- A. If there happened to be some it would be the first to come through the grinder, but I doubt that very much because we don't use the same plate.
- Q. And what about the pans, do you use the same pans for both your sausage and your ground beef?
- A. The same pans were used, but they are always washed. Every-time you get through using them, they are always washed. (R. 195)

* * * * *

- Q. Mr. Richins, what is the order of grind that you have at Grand Central Market?
- A. The order of grinding, we have a rack set up at this particular store where all our ground beef is on that same rack, and we have a different place for pork and lamb, but it is in separate pans.

The first thing in the morning when a butcher comes in to grind, the first thing he grinds is ground beef, then either ground round or ground chuck, and if he needs sausage he will grind sausage.

- Q. When you say he will grind sausage, how often does he do that?

A. Sometimes twice a week, at other times three times at the most.

Q. Does he grind beef every morning?

A. We grind beef sometimes five or six times a day.

Q. The first that is ground then is the beef, is that right?

A. Yes.

Q. And if you need Sausage, that is ground?

A. That will be ground after all beef has gone through.

Q. You mention a large plate, is that on the grinder?

A. That isn't on the grinder, the worm is taken out and the cutter, and the other put in.

Q. As I understand it, you can't grind sausage and ground beef through the grinder without making a change?

A. No.

Q. You say it is always cleaned after you have ground sausage, is that correct?

A. Yes.

Q. What is the reason for that?

A. The reason for that is we leave the sausage until the last, after everything is out; while the girls are wrapping the meat, the butcher has time to stop and clean that mill.

Q. Is there any reason, after grinding sausage, and he didn't clean it, what would happen?

A. The reason is, if you didn't clean it you would have all your ground beef tasting like sausage, because of the seasoning.

Q. That has to come out?

A. That has to come out, you wouldn't know whether you had sausage or ground beef.

Q. You talk about seasoning, what kind of seasoning are you talking about?

A. It is real strong seasoning, sage and pepper and the like in it.

Q. How much beef is ground every morning?

A. We grind around eighty pounds.

Q. Any more than that?

A. We will grind before noon, and on Saturday in that particular store, it will be between five

hundred and one thousand pounds goes through that same mill.

Q. How does that compare with sausage?

A. About forty pounds of sausage, or fifty.

Q. That is just occasionally?

A. Yes,--forty or fifty.

Q. That would last two or three days?

A. Yes.

Q. When you wash this particular machine down there, where is it washed?

A. Right in the meat market there, we do all the grinding in the ice box. In that market we have a big sink, that the mill and everything will set right down in it to wash it, and we have all the hot water we need there.

Q. How did you get hot water in there, fill the sink?

A. At that particular time, to get the stuff out, we have a nozzle we screw on, the same thing you use for your hose at home, that had quite a force so that would clean everything out.

Q. So that would clean it out and put pressure on the parts of the grinder?

A. Yes.

Q. Do I understand you have to take the grinder apart to change those parts?

A. Oh yes, you have to take the cutter out and the blade off.

Q. That is the time you clean the machine?

A. Yes, that is the time we clean the machine.

Q. Is that right hot water?

A. It is real hot, you can hardly stand your hand under it.

Q. Have you made any measurements to the heat?

A. About 160 is the way it comes out.

Q. You have measured it?

A. Yes, we have done that.

Q. That puts 160 degrees in the nozzle then?

A. Yes sir. (R 195-198)

Mr. Benson in like manner was quite

emphatic about this particular point:

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Q. Are there ways which sausage could get into beef?

A. Intentionally, or otherwise?

Q. Otherwise?

A. No. (R.205)

The record also establishes that every morning approximately 80 pounds of beef was ground and that only two or three times a week about 40 pounds of sausage was ground. On Friday and Saturday some 500 to 1,000 pounds of beef was ground.

This Court is well aware of the epidemic of trichinosis which broke out in Salt Lake City among the German speaking people at the time the Niemanns became ill. The Niemanns are of German origin and the record in this case establishes without controversy that plaintiffs traded at Suhrmann's Market. The record also shows that this Court is well aware of the fact that the source of trichinosis was traced by the

public health authority to Suhrmann's Market. see Schneider v. Suhrmann, 8 Utah 2d 35, 327 P. 2d 822; Bodon v. Suhrmann, 8 Utah 2d 42, 327 P. 2d 826; Naujoks v. Suhrmann, 9 Utah 2d _____, 337 P. 2d 967.

CONCLUSION

The opinion of this Court makes the defendant an insurer. Regardless of how careful the defendant or other stores might be, anyone testifying that they ate uncooked ground beef purchased from such store, and that that was the only uncooked meat eaten, could recover against such store if infected by trichinosis from some other recognized source. The circumstances and conditions surrounding this case, with an epidemic traced to a known source, and the testimony in the record that beef was always ground first, and that the machine was always cleaned after sausage was ground, and with

water of 160° temperature, which is sufficient to kill trichinae, compells this Court to reverse the verdict. The present decision cannot stand unless the undisputed testimony is either ignored or amended by this Court.

Respectfully submitted,

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